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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 665.

TEXACO, INC., a Delaware corporation,
Petitioner,

vs.

WILMER M. HOLSINGER and MARY L. MOYER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

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October, 1964.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Texaco, Inc., petitioner, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled cause on September 1, 1964.

OPINION BELOW.

The opinion of the District Court (R. 20, 21) is not reported. The opinion of the Court of Appeals (Appendix A, *infra*, pp. A1-A10) may be found in 336 F.2d 230.

JURISDICTION.

The judgment of the Court below (Appendix B (1), *infra*, p. A10) was entered on September 1, 1964. A timely petition for rehearing was denied on October 2, 1964 (Appendix B (2), *infra*, p. A11). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED.

(1) In construing a lease, did the Tenth Circuit Court reject a simple, consistent, controlling, written provision and, without evidence, create, by mere implication, an opposing provision?

(2) Is such action by the Tenth Circuit enforcing this implied provision created by it, which negated the provision agreed to by the parties, contrary to the applicable law of Kansas?

(3) Does such action render illusory and meaningless constitutional guaranties of the right to contract?

STATEMENT.

This declaratory judgment action was removed, because of diversity, from a Kansas District Court to the United States District Court for Kansas.

The respondents, plaintiffs in the trial court, sought a declaration that petitioner would have no right to exercise the options to extend specifically granted by the Kansas lease in controversy of a service station site, the lease being executed by respondents as landlords, and petitioner as tenant. The District Court granted the relief

sought, holding that petitioner must surrender possession at the end of the initial term, notwithstanding a provision granting petitioner options to extend, and notwithstanding investments of more than $40,000.00 in improvements. The Circuit Court affirmed.

The fact that the lease is on petitioner's regular printed form is significant; consequently, the lease was reproduced photographically (R. 9, 16). The pertinent applicable portion of the lease is here reproduced photographically as Appendix C (p. A13). The respondents' case in the District Court, as well as in the Court of Appeals, rested entirely on this lease and a stipulation of facts (R. 7), there being no oral evidence. There was no stipulation, and no evidence, concerning negotiations for the lease, or the meaning attributed to the lease provisions by the parties.

Section 12(a) of the lease (Appendix C, *infra*, p. A13) grants petitioner six successive options to extend, each for a period of five years. The following provision, 12(b), provides that under certain circumstances the respondents-landlords should submit to petitioner-tenant, for its acceptance or refusal on the same terms, third party offers received by and satisfactory to respondents-landlords. The next provision, 12(c), provides, simply, that the petitioner-tenant's failure to elect to lease on the same terms as those contained in the third party offer should not "limit or affect" petitioner-tenant's "right and option to extend this lease as provided in paragraph (12)(a)".

The stipulation of facts established that the respondents-landlords had, under 12(b), submitted an offer to lease by a third party (R. 17), and that the petitioner-tenant had elected not to lease on the same terms (R. 18).

In this posture, the situation was precisely the situation contemplated by the parties and provided for by paragraph 12(c). However, the Court of Appeals refused to apply 12(c), even though it recognized that its decision might have the "* * * ultimate effect of deleting 12(c) from the contract" (Appendix A, p. A9).

The fundamental rationale for this holding evidently is the Circuit Court's finding that 12(b) "required" petitioner to accept a new lease on the terms of the proffered lease if it desired to stay in possession. That is, the Court held that if an option was available under 12(b), the options granted by 12(a) could not be exercised. Thus, the Court stated:

> "In our opinion the only reasonable construction of paragraph 12, when considered in the light of the lease as a whole, is that Texaco's option to extend the lease under the provisions of 12(a) is qualified and conditioned by the provisions of 12(b), *which require* it to elect to lease the premises upon the same terms and conditions as those of any bona fide third-party offer that the appellees may receive and desire to accept at any time during the primary term of the lease or any extension or renewal thereof. * * *" (Italics by petitioner)

Obviously, if there were any express provision in 12(b), or in any other portion of the lease, which states that if petitioner has available an option under 12(b), then it may not exercise the option granted by 12(a), or "which require", in this situation, the options granted by 12(b) to be in lieu of and instead of those granted by 12(a), then there would be a repugnancy between such provision and 12(c) and the Circuit Court's enforcement of one, and its rejection of the other, could not be criticized.

There is, however, no provision in 12(b), or elsewhere in the lease, stating that, in this situation, the options of 12(b) shall be in lieu of those granted by 12(a). Instead, there is a specific provision, 12(c), tailored for this precise situation, stating expressly and specifically that petitioner's refusal to accept the terms of the proffered lease should not "limit or affect" petitioner's "right and option to extend" under 12(a).

The Court of Appeals thus created and then enforced an *implied* provision of the lease which was directly opposed to the express provision agreed upon. The law of Kansas does not, of course, provide authority for creating and enforcing implied covenants which overturn and abrogate express covenants, nor does the law of Kansas warrant such judicial impairment of the obligation of contracts. On the contrary, the law of Kansas is that the meaning of a written obligation is to be determined by the words of the contract, giving all words meaning and effect. *Weiner* v. *Wilshire Oil Co.*, 192 Kan. 490, 389 P.2d 803 (1964).

REASONS FOR GRANTING THE WRIT.

A dispassionate reading of the governing provisions of the lease will have disclosed that there are no words in 12(b), or elsewhere in the lease, which require petitioner, on peril of losing all interest in the premises, to accept any offer made under 12(b), or which state that petitioner may not contemporaneously have the options granted by 12(a) and 12(b), with the right, as expressly given, to exercise either or none. Whether or not the Court of Appeals could reasonably imply such a requirement, if there had been no paragraph 12(c), is immaterial here, because there is a paragraph 12(c), agreed to by

the parties, precisely delineating the rights of the parties in this very situation.

That a Court should not create by implication a provision contrary to an express provision should be so plainly correct that citation of cases should not be necessary. Indeed, the Kansas cases go further and hold that "* * * words cannot be read into a contract which import an intent wholly unexpressed when it was executed * * *", nor may the Court "* * * make an agreement for the parties which they did not make for themselves". *Anderson* v. *Rexroad*, 175 Kan. 676, 266 P.2d 320 (1954), specifically approved and quoted *Smith* v. *Holmes*, 181 Kan. 438, 312 P.2d 228 (1957). Nevertheless, the Circuit Court has in this case created a new contract, which excludes 12(c), and has substituted by implication a new provision in 12(b), a provision which effectively terminates the options granted by 12(a), if one is available under 12(b). Thus, it is clear that the Circuit Court, contrary to the law of Kansas, not only read words into the contract which were not expressed, but words which were directly contrary to the parties' own agreed expression of their intention, and made for the parties a new and entirely different contract.

There is no question here concerning permissible inferences or weighing of evidence, for the Circuit Court based its ruling on the words of the contract alone, there being no evidence dehors the contract on the matters here involved. In this connection, the respondents, as well as the Circuit Court, have each dwelt at length on the fact that this contract is on petitioner's printed form, and that it should, therefore, be construed against petitioner. Not for one moment has petitioner ever disputed this legal proposition but its materiality has never been apparent, for neither respondents, nor the Circuit Court, have ever cited

any reason or authority, which holds or indicates that this rule of construction warrants the implication of a provision into a contract with a meaning exactly opposite that of a clear provision, clearly written, as 12(c).

One final question remains: Is it important that this simple question concerning a small gasoline service station lease be decided correctly? Petitioner unhesitatingly submits that proper resolution of this case warrants the Court's attention because:

First: This matter is important to petitioner, a national organization, operating service stations on a nationwide basis. Obviously, a ruling such as this that petitioner's form of lease actually grants no option to extend will have an effect on petitioner far beyond petitioner's loss of revenue, investment, and good will incurred because it cannot extend this one lease as it thought it could. This decision will be cited as a precedent by other landlords who rent to petitioner, as well as against tenants generally by landlords seeking, because of changed economic conditions, to avoid their written options. It is submitted that this decision of the Court of Appeals constitutes an open invitation to all to seek judicial termination of their contractual obligations, even when there is no claim of overreaching, no fraud, no misrepresentation, no claim, even, of lack of understanding.

Second: This Court long ago established the principle that the freedom to contract is protected by the due process clause of the Fifth and Fourteenth Amendments. Inhering in, and rendering meaningful this right to contract, is the right to be free of judicially implied covenants which are in lieu of and opposed to covenants mutually agreed upon. Every person who enters into or performs a contract must assume, as a bare minimum,

that he can judicially enforce the covenants he assumed, not that these will be rejected, and opposing covenants implied by a court. The futility and chaos of any other expectation appalls the imagination.

Truly, there can be no substance to the right to enter into a covenant which a court may, in its discretion, refuse to enforce. Because of these considerations and the impact of the idea that a court may substitute its implication for the agreed provision, it is important that any tendency of any court to assume such authority be quickly throttled. The trust and faith which must, in our society, be placed in agreements requires no less.

CONCLUSION.

The right to contract is fundamental. This right, without the right to enforce the contract as written, is illusory. For this reason, it is submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

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October, 1964.

APPENDIX A.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JULY TERM, 1964

TEXACO, INC., a Delaware Corporation,
Appellant,
vs.
WILMER M. HOLSINGER and MARY L. MOYER,
Appellees.

Number 7708

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

(Filed United States Court of Appeals, Tenth Circuit, September 1, 1964, Robert A. Cartwright, Clerk.)

Leonard O. Thomas (Lee E. Weeks, J. D. Lysaught, Richard Millsap, Robert H. Bingham, Ervin G. Johnston, Roger D. Stanton, Philip R. Wimbish and William E. Lester on the brief) for Appellant;

Robert E. Fabian (John E. Blake, Bill E. Fabian and John E. Blake, Jr., on the brief) for Appellees.

Before MURRAH, Chief Judge, BECKETT and HILL, United States Circuit Judges.

HILL, Circuit Judge.

This declaratory judgment action was originally commenced in the state district court of Kansas to determine the rights and obligations of the parties under a real estate lease executed on June 10, 1953. The case was removed

to the United States District Court for the District of Kansas, where a trial to the court was had and resulted in a judgment adverse to the appellant, Texaco, Inc. It appeals.

The stipulated facts show that, by the terms of the lease in question, the appellees leased a described tract of land, located in Johnson County, Kansas, to the appellant for an initial term of 10 years at an agreed rental of $140 per month. This lease required that Texaco build a modern service station on the premises at a cost of at least $18,000, and provided that the 10 year term should begin after construction of the station or, in any event, not later than January 1, 1954. In accordance with the contract, Texaco built a service station upon the premises at a cost of $40,700 and the initial term of the lease commenced on January 1, 1954. These premises have been maintained in good condition by Texaco and it has installed etquipment worth $4,800. Texaco paid the required rent and, except as hereafter discussed, complied with all of the obligations imposed upon it by the lease.

The dispute in this case is over the interpretation to be given to paragraph 12 of the lease, which is entitled "Option to Extend Term". Under sub-paragraph (a) of that paragraph, the appellees, as lessors, granted to Texaco, as lessee, the "* * * right and option to extend this lease for six successive periods of five years each at the following rental: One Hundred and Forty Dollars ($140.00) per month, payable monthly in advance. * * *" and Texaco was required to notify the lessees, in writing, of its election to extend the lease at least 60 days prior to the date of termination of the lease. Sub-paragraph (b) provides: "If at any time during the term of this lease or any extension or renewal provided for herein, lessor shall receive a bona fide offer to lease the demised premises for a term

to begin subsequent to the present demised term or such extension or renewal, and the lessor desires to accept such offer, lessor will immediately submit to lessee a written copy of such proposed lease with a full disclosure of the terms and provisions thereof and lessee shall have thirty (30) days after receipt thereof in which to elect to lease said premises upon the same terms and provisions contained in such proposed lease." The last provision of paragraph 12 is sub-paragraph (c), which states: "In the event lessee is granted an option to extend under the provisions of paragraph (12)(a), it is agreed that if lessee does not in any instance elect to lease said premises in accordance with the provisions of paragraph (12)-(b), such failure shall in no way limit or affect lessee's right and option to extend this lease as provided in paragraph (12)(a)."

In February, 1963, the appellees received a bona fide offer to lease the premises at a monthly rental of $325 and, on February 11, 1963, they notified Texaco of such offer by letter from their attorney. A photostatic copy of the proposed lease was enclosed in the letter and Texaco was requested to advise them within 30 days "* * * as to whether or not you shall elect to lease said premises on the same terms as are contained in said proposal." Texaco refused saying that its lease with appellees "* * * contains six successive five-year options to extend in favor of our company, and in all probability our company will timely exercise the first of its said extension options and if and when it does this will continue our right to possession under our lease as supplemented." Appellees then commenced this action.

The trial court concluded that paragraph 12 was ambiguous and should be construed against Texaco, which prepared the lease; that paragraph 12(c) was repugnant

to 12(a) and should be deleted from the lease; and it was implicit in paragraph 12(b) that, unless Texaco exercised the option to lease on the same terms as offered by a third party, the appellees had the right to lease to such third party.

At the outset, we agree with the parties that the lower court erroneously concluded that paragraph 12(c) of the lease was repugnant to paragraph 12(a). However, that does not necessarily require a reversal of the judgment. It is well settled that a judgment, which is correct in ultimate effect, will not be disturbed on appeal even though the lower court relied upon a wrong ground or gave an untenable reason for its action. The issue on appeal is the correctness in ultimate effect of a judgment and not the reason or reasons given for it by the trial court. If the judgment is sustainable upon any legal basis, it will be upheld on appeal despite the erroneous or untenable reasons given by that court for its entry. Brown v. Allen, 344 U.S. 443; J. E. Riley Investment Co. v. Commissioner, 311 U.S. 55; Helvering v. Gowran, 302 U.S. 238; Kaye v. Smitherman, 10 Cir., 225 F.2d 583, cert. denied, 350 U.S. 913; First National Bank in Wichita v. Luther, 10 Cir., 217 F.2d 262; Utah Copper Co. v. Railroad Retirement Board, 10 Cir., 129 F.2d 358, cert. denied, 317 U.S. 687. We must, therefore, determine from the record whether the judgment below is sustainable upon any legal basis and, if so, it must be upheld by this court.

Under the law of the State of Kansas, the place of making and performance of the lease in question, a contract that does not contravene legal principles, applicable statutes or the public policy of the state should be construed and interpreted in such a manner as to carry out and give effect to the mutual intention of the parties. Springer v. Litsey, 185 Kan. 531, 345 P.2d 669; Zelinkoff

v. Johnson, 185 Kan. 489, 345 P.2d 665; Moore v. Jones, 10 Cir., 215 F.2d 719, 720, and Kansas cases therein cited. Unless a written instrument is ambiguous or vague in its terms, that intention must be determined from the instrument as a whole or, as is often stated, from its "four corners", which simply means that all of the language used anywhere in the instrument should be taken into consideration and construed in harmony with other provisions of the contract. Weiner v. Wilshire Oil Company of Texas, 192 Kan. 490, 389 P.2d 803; Borgen v. Wiglesworth, 189 Kan. 261, 369 P.2d 360; Kittel v. Krause, 185 Kan. 681, 347 P.2d 269; Smith v. Russ, 184 Kan. 773, 339 P.2d 286; Froelich v. United Royalty Company, 179 Kan. 652, 297 P.2d 1106; Dipo v. Ringsby Truck Lines, 10 Cir., 282 F.2d 126; Moore v. Jones, supra; Filtrol Corp. v. Loose, 10 Cir., 209 F.2d 10. An ambiguity does not appear until the application of the rules of interpretation to the face of the instrument leaves it genuinely uncertain as to which of two or more meanings is proper. Weiner v. Wilshire Oil Company of Texas, supra; Dearborn Motors Credit Corporation v. Neel, 184 Kan. 437, 337 P.2d 992; Custom Built Homes Co. v. Kansas State Com'n of R. & T., 184 Kan. 31, 334 P.2d 808, cert. denied, 361 U.S. 816.

Appellant contends that there is no ambiguity in the provisions of paragraph 12 and that the intention of the parties is clearly expressed within the four corners of the instrument. Its argument is this: Paragraph 12(a) of the lease gives it the "right and option" to extend the lease for six successive periods of 5 years each; paragraph 12(b), which does not in any way conflict with 12(a) and which was inserted into the lease for its exclusive benefit, does not deal with options to extend the lease at all but, rather, is concerned solely with an option on its part to enter into a new lease to commence at the termination

of the lease in question, as extended under 12(a), and requires the appellees to submit to it any proposed lease offer or offers they may receive in that regard for the purpose of giving it the option of accepting or rejecting a new lease on the same terms and conditions; and, in any event, the clear and concise language of paragraph 12(c) gives it the rights granted in 12(a), notwithstanding the provisions of 12(b) or any refusal on its part to accept any offer that might be made to lease the demised premises by a third party. In short, Texaco says that it has the right and option to extend the lease for a total of 30 years beyond the ten-year primary term by virtue of the provisions of 12(a), that this right and option is further secured by 12(c) and that, under 12(b), it has the right to extend the lease even further by electing to enter into a new lease with appellees under the same terms and conditions as may be set forth in a new lease proposal from a third party.

It is true that paragraph 12(a), standing alone, is the familiar lease clause by which the lessee is given an option to extend the primary term of the lease for a specified period or periods of time, provided that such lessee gives the requisite notice to the lessor of its election to exercise the lease option. Thus, there can be no doubt that if the lease contained only paragraph 12(a), Texaco would have the unconditional right and option to extend the ten-year primary term of the lease in question for 6 successive periods of five years each at a monthly rental of $140, provided only that it gave the lessors, appellees, 60 days notice of its election to exercise each of the options. However, as we view it, paragraph 12(b) is an inseparable and integral part of the "Option to Extend Term" provisions of the lease and, as such, has nothing whatsoever to do with an option to enter into a new lease

at the expiration of the one involved in this case. That paragraph is concerned with the lease in question and it qualifies and conditions the rights granted in paragraph 12(a) by providing that, if at any time during the primary term of the lease or any extension or renewal thereof, the lessors receive a bona fide offer to lease the premises from a third party which they desire to accept, they shall submit a written copy of that proposed lease to Texaco, make a full disclosure of its terms and provisions and Texaco then has 30 days "* * * in which to elect to lease said premises upon the same terms and provisions contained in such proposed lease." Despite these provisions, paragraph 12(c) purports to give appellant the absolute and unconditional right to continue in possession of the premises under the options set forth in 12(a).

There is therefore, an ambiguity in the "Option to Extend Term" provisions of paragraph 12. Indeed, 12(c) is in conflict with, and repugnant to, the provisions of 12(b). Under these circumstances, the court must place itself in the position of the parties at the time the lease was executed and, in order to determine the mutual intention of the parties, consider the lease, its purpose and the circumstances surrounding its execution. Weiner v. Wilshire Oil Company of Texas, supra; Dearborn Motors Credit Corporation v. Neel, supra; Custom Built Homes Co. v. Kansas State Com'n of R. & T., supra; United States v. Essley, 10 Cir., 284 F.2d 518. As this court said in Moore v. Jones, supra, 215 F.2d at 721: "* * * where the language used is ambiguous and the intention of the parties cannot be ascertained therefrom the background against which the contract was executed and the circumstances attending its execution should be taken into consideration as an aid to the ascertainment of such in-

tent. * * *" In so doing, we must determine the intention of the parties and the purpose of the contract from a consideration of all of the pertinent provisions of the lease and not by a critical analysis of a single isolated provision. Weiner v. Wilshire Oil Company of Texas, supra; Zelinkoff v. Johnson, supra; K. & E. Drilling, Inc., v. Warren, 185 Kan. 29, 340 P.2d 919; Geier v. Eagle-Cherokee Coal Mining Company, 181 Kan. 567, 313 P.2d 731; United States v. Essley, supra. We must also follow the rule that in placing a construction upon a written instrument reasonable, rather than unreasonable, interpretations are favored by the law and results which vitiate the purpose or reduce the terms of the contract to an absurdity should be avoided. Weiner v. Wilshire Oil Company of Texas, supra; Zelinkoff v. Johnson, supra; Geier v. Eagle-Cherokee Coal Mining Company, supra.

In our opinion the only reasonable construction of paragraph 12, when considered in the light of the lease as a whole, is that Texaco's option to extend the lease under the provisions of 12(a) is qualified and conditioned by the provisions of 12(b), which require it to elect to lease the premises upon the same terms and conditions as those of any bona fide third-party offer that the appellees may receive and desire to accept at any time during the primary term of the lease or any extension or renewal thereof. This necessarily means that if appellees have received a bona fide offer they desire to accept, Texaco must at the expiration of the primary term or any extension or renewal thereof, as the case may be, either elect to lease the premises upon the same terms and conditions as the offer or it must relinquish possession of the premises. This clearly was the intention of the parties at the time they entered into the lease. Otherwise, the provisions of 12(b) would be vitiated and reduced to an

absurdity since the rights contained therein would be deleted from the lease and would become meaningless and have no effect at all. A further indication of the intention of the parties that appellant was not to have an unconditional option to extend the lease may be found in the "Option to Purchase" provisions of paragraph 11. There, the appellant, as lessee, is given the exclusive right at its option "* * * to purchase the demised premises * * * at any time during the term of this lease or any extension or renewal thereof * * * on the same terms and at the same price as any bona fide offer for said premises received by lessor and which offer lessor desires to accept. * * *" These provisions are almost identical with the provisions of paragraph 12 except that they grant an unconditional option to purchase. If the parties had intended for Texaco to have an unconditional option to extend the term of lease, they could have stopped with 12(a) but they did not do so. Instead, 12(b) was inserted thereby indicating that the option to extend the lease was a conditional one.

It is suggested that the interpretation which we have given to the lease has the ultimate effect of deleting 12(c) from the contract. That may be but the lease was prepared by Texaco, and under the general rule, it must be strictly construed against Texaco and liberally toward the other party, appellees. Any doubts must be resolved against the former and in favor of the latter. Smith v. Russ, supra; Dearborn Motors Credit Corporation v. Neel, supra; Francis v. Shawnee Mission Rural High School, 161 Kan. 634, 170 P.2d 807; Bankers' Mortgage Co. v. Dole, 130 Kan. 367, 286 P. 258. Furthermore, the provisions of 12(c), as they relate to 12(a) under appellant's construction, are general provisions as to the option to extend the lease and those of 12(b) are specific provisions

on the same subject. It is a general rule that where general and specific provisions conflict, as they do here, the general must yield to the specific since the latter express more exactly the intention of the parties. Smith v. Russ, supra; 12 Am. Jur., Contracts, § 244, pp. 779-780; 17A C.J.S., Contracts, § 313, pp. 173-177; 3 Corbin on Contracts, § 547, page 176.

The judgment is AFFIRMED.

APPENDIX B(1).

Judgment

Thirty-Sixth Day, July Term, Tuesday, September 1st, 1964.

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable John C. Pickett and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Kansas and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

APPENDIX B(2).

Order Denying Appellant's Petition for Rehearing
Thirteenth Day, September Term, Friday, October 2nd, 1964.

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable John C. Pickett and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard on the petition of appellant for a rehearing herein and was submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

BOOK 61 PAGE 613

(12)—Option to Extend Term. (a) The lessor hereby grants to the lessee the right and option to extend this lease for [redacted] six successive periods [redacted] of five years each at the following rental: One Hundred and Forty Dollars ($140.00) per month, payable monthly in advance.

Lessee shall notify lessor in writing of its election to extend this lease sixty (60) days prior to the date of the expiration of the term of this lease and notice thereof shall be deemed sufficient if given in the manner hereinafter provided.

(b) If at any time during the term of this lease or any extension or renewal provided for herein, lessor shall receive a bona fide offer to lease the demised premises for a term to begin subsequent to the present demised term or such extension or renewal, and the lessor desires to accept such offer, lessor will immediately submit to lessee a written copy of such proposed lease with a full disclosure of the terms and provisions thereof and lessee shall have thirty (30) days after receipt thereof in which to elect to lease said premises upon the same terms and provisions contained in such proposed lease.

(c) In the event lessee is granted an option to extend under the provisions of paragraph (12) (a), it is agreed that if lessee does not in any instance elect to lease said premises in accordance with the provisions of paragraph (12) (b), such failure shall in no way limit or affect lessee's right and option to extend this lease as provided in paragraph (12) (a).